Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry of the Wireless Broadband Access Task Force	)	GN Docket No. 04-163
	)	
	)	
Wireless Broadband Access Task Force Seeks Public Comment on Task Force Report	)	
	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") hereby submits these reply comments in response to the *Public Notice* seeking comment on the report issued by the Commission's Wireless Broadband Access Task Force ("Task Force") and the comments filed in response to that *Public Notice*.[1] T-Mobile commends the goals of the Report and its continued commitment to addressing issues, such as spectrum access and regulatory flexibility, that are critical to the successful deployment of wireless broadband alternatives.

I. INTRODUCTION

T-Mobile applauds the Task Force for emphasizing in its Report the unique aspects of wireless broadband: mobility and portability.[2] T-Mobile operates an all-digital national wireless network based on the globally dominant Global System for Mobile ("GSM") technology with better than 18 million customers in the U.S. and over 70 million worldwide. T-Mobile's entire

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1 *Wireless Broadband Access Task Force Seeks Public Comment on Task Force Report*, Public Notice, GN Docket No. 04-163, DA 05-610 (Mar. 8, 2005); *Connected & On the Go – Broadband Goes Wireless*, Report by the Wireless Broadband Access Task Force, Federal Communications Commission (Feb. 2005) ("*Report*").

2 *Id.* at 2, 13.

U.S. network has been enhanced to provide General Packet Radio Service ("GPRS"), providing customers with wireless data access through a variety of integrated devices at average speeds of 40 Kbps. In addition, T-Mobile is in the process of upgrading its U.S. network to provide Enhanced Data for Global Evolution ("EDGE") technology.[3] Finally, augmenting its national data network, T-Mobile operates a WiFi wireless broadband network with service in more than 5,600 public locations across the country. This "hybrid network" allows customers to move seamlessly from location-to-location to satisfy their broadband access needs.

II. ACCESS TO SPECTRUM

The record clearly demonstrates that it is important to deploy additional licensed spectrum on an expedited basis for wireless broadband.[4] It is critical for the FCC to provide sufficient spectrum to satisfy the future rollout of wireless broadband.[5] To date, many carriers lack the necessary spectrum to initiate a wide scale deployment of wireless broadband services.[6] While unlicensed spectrum has filled some gaps in wireless broadband coverage additional licensed spectrum can augment mobile broadband alternatives further for the benefit of consumers.

One source of additional spectrum is the 700 MHz band which can be made available for wireless broadband once incumbent broadcasters are relocated from the spectrum at the close of the Digital Television ("DTV") transition.[7] The 700 MHz band is ideal for mobile and fixed

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[3] EDGE supports data communications within the existing GSM standards up to transmission rates of 384 kbps.

[4] *See, e.g.*, Microsoft Comments at 3-7; Cingular/BellSouth Comments at 2-5.

[5] *Report* at 46.

[6] *See id.* at Appendix C, 12.

[7] Broadcasters operating in the 700 MHz band must relocate either by December 31, 2006 or by the time 85 percent of the television households in the relevant market are capable of receiving DTV service. 47 U.S.C. § 309(j)(14).

wireless broadband services because of its favorable propagation characteristics.[8] T-Mobile has joined other technology companies in calling for an expedited conclusion to the digital transition to facilitate the deployment of this spectrum for new uses and services.[9] It has been nearly ten years since Congress established the statutory mandate for broadcasters to eventually relocate off their analog channels in exchange for their permanent digital channels. Given the length of time that has transpired, setting a firm deadline to finally transition incumbent broadcasters from these channels should come as no surprise to broadcasters. At least one draft proposal is circulating on Capitol Hill now to establish a December 31, 2008 deadline for the government to reclaim the broadcast analog channels.[10] Such a deadline should provide broadcasters with adequate time to transition while also ensuring that this spectrum is made available for auction within a reasonable timeframe as originally intended by Congress.[11]

The Commission could also facilitate access to spectrum by continuing to streamline its spectrum allocation and service rule process and by enhancing its auction design.[12] Historically, the licensing of spectrum for competitive wireless services has been a multi-year process.[13] The nature of the current process thus significantly delays the deployment of new services. To

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8 *See, e.g.*, CTIA Comments at 5.

9 *See* Press Release, High Tech DTV Coalition: Hard Deadline Key to Free Airwaves for Broadband, Public Safety (Apr. 27, 2005).

10 *See DTV Bill Would Set 2008 Hard Transition, Newly Released Draft Says*, COMMUNICATIONS DAILY, May 23, 2005, at 1.

11 *See* 47 U.S.C. § 337 (allocating 36 MHz of spectrum between 746 MHz and 806 MHz for commercial use and prohibiting broadcast operations on this spectrum after the DTV transition is completed).

12 CTIA Comments at 6-8.

13 For example, it took almost nine years to move from reallocating spectrum for PCS to auctioning all of the PCS spectrum. *See Amendment of the Rules to Establish New Personal Communications Services*, Notice of Inquiry, 5 FCC Rcd 3995 (1990); *C, D, E, and F Block Broadband PCS License Auction Closes; Winning Bidders of 302 Licenses Announced*, Public Notice, DA 99-757 (Apr. 20, 1999).

address this problem, the Commission should expand its practice of establishing flexible allocation and service rules for spectrum, and should also experiment with innovative auction design (such as combinatorial bidding) to facilitate the marketplace determining the highest and best use for the radio waves. Enabling bidders to easily package their spectrum to suit their business, consumer, and marketplace needs reduces transaction costs and will facilitate the deployment of new services.

Finally, the Commission should continue to allocate spectrum for unlicensed use as opportunities arise. Carriers and entrepreneurs, including T-Mobile with its Hot Spot network, have been enormously effective in deploying innovative wireless broadband services using unlicensed spectrum.[14] Indeed, many of the wireless broadband alternatives that are being developed and deployed today, such as WiFi and WiMax, have utilized unlicensed spectrum.

III. RIGHTS OF LICENSEES WITH EXCLUSIVE USE

The record also clearly demonstrates that a licensee should have the exclusive right to use its auctioned spectrum as it determines is in the best interests of its business and consumers.[15] Licensees therefore should have the right to lease or assign to third parties spectrum acquired at auction or in the secondary market without concern that their rights will be subsequently diminished by the FCC granting "underlay" privileges or other such rights to interested parties.[16]

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[14] T-Mobile's Hot Spot service alone provides access to 5673 T-Mobile Hot Spot U.S. locations and 9758 roaming locations. *See* Worldwide Locations, T-Mobile Hot Spot, *at* https://selfcare.hotspot.t-mobile.com/locations/viewGlobalLocationsForLocationDomain.do.

[15] *See, e.g.*, Cingular/BellSouth Comments at 10-13; Qualcomm Comments at 17-20.

[16] *See* CTIA Comments at 14; *Unlicensed Operation in the TV Broadcast Bands, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Notice of Proposed Rulemaking, 19 FCC Rcd 10018 (2004) (proposing to allow unlicensed operation in the broadcast TV spectrum); *Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, Notice of Inquiry and Notice of Proposed Rulemaking, 18 FCC

Regulatory certainty in this manner will allow the licensee to best control the amount of in-band interference they experience and will permit informed decisions regarding additional investment in the network and deployment of new services. This approach also provides auction applicants with the certainty necessary to make informed bids.

Similarly, the Commission should rely on secondary markets to ensure efficient spectrum use post-auction or post-licensing.[17] It is in T-Mobile's best interest to make the best and most efficient use of our spectrum holdings. However, we benefit from the availability of spectrum through leases in the secondary market. Since it was adopted, the secondary markets regime has been extremely effective in ensuring efficient spectrum utilization.

IV. REGULATORY FRAMEWORK

Almost without exception, the commenters on the *Public Notice* promote a market-based, deregulatory approach to wireless broadband services.[18] The Department of Justice alone raises the possibility of adopting a more stringent regulatory environment for these services, but only in the context of CALEA.[19] To date, wireless services have flourished under this regulatory approach.[20] There is no reason to believe that this same approach will not be as effective with

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(Continued . . .)
Rcd 25309, ¶16 (2003) (proposing to allow the operation of underlay transmitters on licensed spectrum).

17 *See* CTIA Comments at 13-14.

18 *See, e.g.*, Wireless Communications Association International Comments at 4-5; Cingular/BellSouth Comments at 6-10; Microsoft Comments at 7-9.

19 Department of Justice Comments at 2-4.

20 *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, FCC 04-216, Appendix A, Table 1: CTIA's Semi-Annual Mobile Telephone Industry Survey (Sept. 28, 2004) (noting an increase in estimated mobile telephone customers from 16,009,461 to 158,721,981 between December 1993 and December 2003).

respect to wireless broadband services. Thus, regardless of whether the Commission classifies wireless broadband as an information service or a telecommunications service, it should ensure that it is free of burdensome regulation.

V. FACILITATING DEPLOYMENT

Finally, T-Mobile would like to applaud the Wireless Bureau for its recent Public Notice reminding utility pole owners of their obligation to provide wireless providers with access to utility poles at reasonable rates.[21] Nondiscriminatory access to public rights of way is critical to the effective and efficient deployment of wireless broadband services. Moreover, wireless providers are entitled to the benefits and protection of Section 224 of the Communications Act.[22] Many wireless providers, however, continue to have problems in obtaining access to municipality-owned utility poles. For example, in its comments, NextG detailed the multiple problems it has had in gaining reasonable access to utility poles in New York and San Francisco.[23] Accordingly, the Commission should take further steps to ensure that utility pole owners are complying with their regulatory obligations under Section 224. For example, the Commission should consider issuing a formal policy statement explaining the enforcement steps it will take against local jurisdictions and utilities that erect barriers to entry for collocation on utility poles and lampposts. Such a statement would provide a sufficient incentive to municipalities and localities to comply with these requirements, thus ensuring fewer obstacles to

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21 *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates*, Public Notice, DA 04-4046 (Dec. 23, 2004).

22 *See Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶¶ 39-41 (1998), *affirmed by National Cable Telecommunications Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002).

23 NextG Networks Comments at 6-9.

the deployment of wireless broadband services.

Similarly, the Commission should restate its exclusive authority over the area of radiofrequency emissions compliance and clarify that state and local governments are barred from direct and indirect regulation of human exposure to radiofrequency emissions.[24] Congress authorized the Commission to enact and enforce radiofrequency emission regulations.[25] A growing number of jurisdictions, however, require a carrier to demonstrate that its wireless facilities comply with the FCC's radiofrequency exposure guidelines either before approving a zoning application, by an annual certification of compliance, and/or by post-construction field-testing.[26] Although state and local governments maintain their authority over traditional zoning functions and local land use regulations, radiofrequency emissions requirements imposed at the local level often amount to indirect regulation of radiofrequency emissions and undermine the FCC's technical powers and enforcement authority under the Communications Act.

VI. CONCLUSION

T-Mobile once again applauds the Task Force for the steps it has taken to promote the deployment of wireless broadband services. Many of the Task Force's proposals will effectively encourage the deployment of wireless broadband services and the Commission should

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[24] *See* Letter from Rosalind K. Allen, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, ET Docket No. 03-137 (Dec. 10, 2004) (requesting that the FCC restate its exclusive jurisdiction to determine whether its spectrum licensees are compliant with the FCC's operational and technical rules).

[25] *See* 47 U.S.C. §§ 301 (providing the FCC with exclusive jurisdiction over the regulation of the "transmission and reception" of radio signals), 332(c)(7) (authorizing the FCC to enact and enforce radiofrequency emissions rules); *Cellular Phone Task Force v. FCC*, 205 F.3d 82 (2d Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001) (indicating that the FCC alone is authorized to determine licensee compliance).

[26] *See* Presentation of T-Mobile USA, ET Docket No. 03-137 (Nov. 18, 2004) (providing examples of local zoning ordinances that require the submission of technical documentation demonstrating compliance with the FCC's guidelines for radiofrequency electromagnetic field strength).

accordingly adopt them. Finally, wireless technology is constantly evolving. To ensure that regulatory policy continues to evolve with this technology, the Commission should continue to evaluate ways in which it can further encourage a wide variety of innovative services, as the Task Force has done in its Report.

Respectfully submitted,

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